

REMARKS

Upon entry of the present amendment, claims 1-8 will remain pending in the above-identified application and stand ready for further action on the merits.

The amendments made herein to the claims do not introduce new matter into the application as originally filed. For example, the amendment to claim 1 finds support in the specification at page 6, lines 4-6 and 13-14, page 9, lines 19-25 and in Figures 1 and 2B.

Regarding the amendment to claim 2, the same has been made to recite the embodiment thereof in an independent format, since unlike claim 1, it recites that the body-surrounding elastic members are "disposed between an outer sheet which constitutes an outermost surface of said diaper and said anti-leakage sheet."

Claim 3 has been amended to depend from claim 1 and to better reflect the recitation of the exterior member recited in claim 1.

Claims 4-6 have been amended to depend from each of independent claims 1 and 2.

Claim 7 has been amended to prevent a redundancy with amended claim 1, and to more particularly recite an embodiment that was previously recited in claim 1.

Provisional Request for Interview

Should the present response not result in an allowance of each of pending claims 1-8, the Examiner is respectfully requested to

contact the undersigned (John W. Bailey, Reg. No. 32,881) at 703-205-8031 (Direct Line), in order to arrange a personal interview to help further the prosecution of the instant case towards allowance.

Specification Objection

In the office action the Examiner objects to the prior amendment as introducing new matter into the disclosure in violation of 35 USC § 132. Reconsideration of this position is requested, in as much as the prior amendment of November 26, 2003 did not amend the specification, but only amended claims in the application. Withdraw of the objection is also requested based on the amendments made herein to claims 1 and 7.

Claim Rejections Under 35 USC § 112, First Paragraph

Claim 7 has been rejected under the provisions of 35 USC § 112, as allegedly failing to comply with the written description requirements of 35 USC § 112, first paragraph. Reconsideration and withdraw of the rejection are respectfully requested based on the following considerations, and the amendments made herein to claims 1 and 7.

The objected language noted by the Examiner no longer occurs in any of the pending claims. Instead claim 7 has been amended to recite limitations previously found in claim 1, and concurrently

claim 1 has been amended to recite in an almost verbatim fashion limitations finding support at page 6, lines 13-14 of the specification, as well as limitations finding support at page 6, lines 4-6 and page 9, lines 19-25 of the specification. As such, each of the instant pending claims 1 and 3-8 find clear and unambiguous support in the specification as originally filed.

Claim Rejections Under 35 USC § 102(b)

Claims 1, 3, 4, 7 and 8 have been rejected under the provisions of 35 USC § 102(b) as being anticipated by Watanabe et al. (US 5,449,353). Reconsideration and withdraw of the rejection is respectfully requested based on the amendment herein of claim 1 to recite limitations previously found in claim 2.

A review of claim 1 shows that the same positively recites:

... the body-surrounding elastic members are each secured in their stretched state at the side portions of said body-surrounding portion to thereby manifest contractibility, *with the body-surrounding elastic members being both disposed between and joined to an inner sheet and an outer sheet of an exterior member of said diaper*, and the body-surrounding elastic members thereby forming gathers at the side portions of said body-surrounding portion; and... (emphasis added)

Nowhere in the disclosure of the cited Watanabe et al. reference (US '353) is there any teaching or provision of body-surrounding members "both disposed between and joined to an inner sheet and an outer sheet of an exterior member". Absent such teachings in the disclosure of Watanabe et al., it follows that the

same cannot anticipate instantly amended claim 1 or any of the claims that depend therefrom.

Further, it is noted that the teachings of Watanabe et al. also fail to provide any motivation to arrive at a diaper of the present invention, having body-surrounding members "both disposed between and joined to an inner sheet and an outer sheet of an exterior member". Absent such motivation in the cited art, it also follows that the teachings of Watanabe et al. cannot form a proper basis for rejecting claim 1 or any claims that depend therefrom under the provisions of 35 USC 103(a)

Claim Rejections Under 35 USC § 103(a)

Claim 2 has been rejected under the provisions of 35 USC § 103(a) as being unpatentable over the disclosure of Watanabe et al. (US '353), further in view of Takabayashi et al. (US 5,817,087). Claim 5 has been rejected under the same statute as being unpatentable over Watanabe et al. (US '353) in view of Iskra (US 5,021,050). Claim 6 has been rejected under the same statute as being unpatentable over Watanabe et al (US '353). Reconsideration and withdrawal of each of these rejections is respectfully requested based upon the amendments made herein, as well as the following comments and considerations.

The Present Invention and Its Advantages

The present invention provides for an advantageous diaper, which possesses unexpectedly good properties relating to fitability and sustained fit, as evidenced by properties such as fit, ease of putting on a wearer and resistance to sagging (see Table 1 at page 13 of the specification).

The advantages possessed by the claimed diapers result in part from Applicants' use of a plurality of body-surrounding elastic members that are disposed at side portions of the diaper, wherein the body-surrounding elastic members are not disposed in at least a center portion of a body-surrounding portion wherein an absorbent core exists, and wherein the body-surrounding elastic members are disposed between an outer sheet which constitutes an outermost surface of the diaper and the anti-leakage sheet of the diaper. In this respect claim 2 clearly recites as follows:

... wherein said body-surrounding elastic members (i) are disposed between an outer sheet which constitutes an outermost surface of said diaper and said anti-leakage sheet, and (ii) form gathers at the side portions of said body-surrounding portion; and

wherein said body-surrounding elastic members are cut at their center position in the diaper width position, so that said body-surrounding elastic members are not disposed in at least the center of the portion of the diaper where the absorbent core exists. (emphasis added)

By utilizing such construction, fitability of the diaper is greatly improved, and at the same time bunching of the absorbent

core is avoided, which produces other advantageous effects as discussed in the application.

Distinctions Over the Cited Art

In the cited primary reference of Watanabe et al. (US '353), the Examiner points to elastic members 11b as body surrounding members. However they are not body-surrounding members of the present invention, because they are provided by Watanabe et al. for avoiding leaking from around the leg. In this respect, one can easily see this fact upon examining items 11a and 11b in figure 1 of the cited Watanabe et al. US '353 reference. As shown in the figure 1, the elastic members 11a and 11b cross and overlap each other in a continuous manner. In such a way the continuous elastic members are able to form tight leg opening portions, and are therefore quite distinct and different from the body-surrounding elastic members of the instant invention.

Further, to the extent that Watanabe might otherwise disclose elastic members (e.g., such as 16a and 16b in figure 5), the Watanabe disclosure nonetheless completely fails to render obvious any diaper recited in instant claims 1-8, including claim 2 and the claims that depend therefrom. For example, nowhere in the cited Watanabe et al. reference is there provided any teaching relating

to a construction as instantly recited in either of claim 1 or claim 2, or the remaining claims that depend therefrom.

The cited secondary references of Takabayashi et al. (US 5,817,087) and Iskra (US 5,021,050), do not cure the above noted deficiency of the cited Watanabe et al US '353 reference, and as such their combination with the teachings of Watanabe et al. are incapable of rendering the present invention as recited in any of pending claims 1-8 obvious. In this respect no motivation is found in any of the cited art that would allow one of ordinary skill in the art to arrive at the present invention as claimed. Absent such motivation in the cited art the outstanding rejections are not sustainable.

CONCLUSION

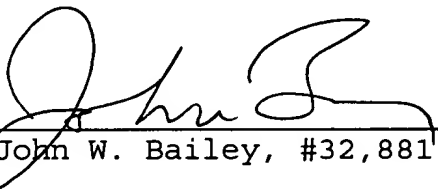
Based upon the above considerations, it is submitted that each of the pending claims are currently patentable under the provisions of Title 35 of the United States Code. The Examiner is respectfully requested to issue a Notice of Allowance clearly indicating this fact.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact John W. Bailey (Reg. No. 32,881) at the telephone number below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

By 
John W. Bailey, #32,881

JWB/jwb/enm
0445-0302P

P.O. Box 747
Falls Church, VA 22040-0747
(703) 205-8000